



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2005

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
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OR2005-05028

Dear Mr. Frazier and Mr. West:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225553.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named department employee. The department and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG states that it will release some responsive information and that other responsive information has been destroyed in accordance with the department's records retention policy.<sup>1</sup> The OIG claims that the

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist request for information was received or to prepare new information in response to a request for information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information it has submitted is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code.<sup>2</sup> The department claims that the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code.<sup>3</sup>

Because the department's and the OIG's claims under section 552.134 of the Government Code are potentially the broadest, we will address the applicability of section 552.134 first. Section 552.134(a) relates to inmates of the department and provides in relevant part the following:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides that, notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" These eight categories of information include basic information regarding an incident involving the use of force and an alleged crime involving inmates. *Id.* § 552.029.

The legislature explicitly made section 552.134 subject to section 552.029. On review, we find that most of the submitted information constitutes information relating to inmates for purposes of section 552.134. However, these records contain information about incidents involving the use of force and alleged crimes involving inmates. Thus, basic information concerning the use of force and the crimes must be released. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information

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<sup>2</sup>Although the OIG also raises section 552.029 of the Government Code, we note that this section is not an exception to disclosure but is instead a list of eight categories of information that must be released when the information concerns an inmate who is confined in a facility operated by or under contract with the department. *See* Gov't Code § 552.029.

<sup>3</sup>We assume that, to the extent any additional responsive information existed on the date the department received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

regarding criminal charges or disciplinary actions filed as a result of the incident. The information that we have marked must be withheld pursuant to section 552.134.<sup>4</sup>

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by other statutes. The remaining information submitted by the department contains W-2 and W-4 forms. Section 6103(a) of Title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the department must withhold these forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of Title 26 of the United States Code.

The information submitted by the department contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). The department does not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

The department claims that the submitted information contains confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. You indicate that the information the department has marked is criminal history information that was obtained from NCIC or TCIC networks. Upon review, however, we find this information does not

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<sup>4</sup>As our ruling is dispositive, we need not address the OIG’s remaining arguments against disclosure for the information it has submitted.

constitute CHRI. Therefore, the department may not withhold this information under section 552.101 on that basis.

We note that a portion of the submitted information is excepted under section 552.101 in conjunction with common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked the criminal history information that must be withheld under section 552.101 in conjunction with common law privacy.

Some of the remaining submitted information is excepted from disclosure under section 552.117(a)(3) of the Government Code.<sup>5</sup> Section 552.117(a)(3) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(3). Therefore, pursuant to section 552.117(a)(3), the department must withhold the information we have marked.

In summary, except for the basic information required to be released under section 552.029(8) of the Government Code, the department and OIG must withhold the information we have marked pursuant to section 552.134 of the Government Code. The department must withhold the following information under section 552.101 of the Government Code: (1) W-2 and W-4 forms in conjunction with federal law, (2) the marked fingerprint information in conjunction with section 560.003 of the Government Code, and (3) the marked information in conjunction with common law privacy. The department must withhold the information we have marked under section 552.117 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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<sup>5</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

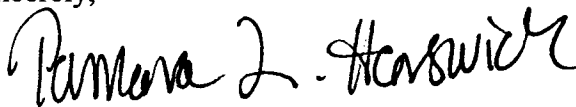
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Tamara L. Harswick". The signature is fluid and cursive, with the first name "Tamara" being the most prominent part.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 225553

Enc. Submitted documents

c: Ms. Yolanda M. Torres  
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(w/o enclosures)